

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

April 5, 1971

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ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW OPINION NO. 71-12 (R-40)

REQUESTED BY: STATE BOARD OF EDUCATION

- QUESTIONS:
1. While it appears that the Arizona Revised Statutes are silent on certificated teachers or public employees of school districts striking, the State Board should be informed whether it is the opinion of the Attorney General at this time that it is legal or illegal for employees of a school district to strike.
 2. While the act of striking at this time is not clear, we are faced with the question of whether the particular kind of violation in this situation constitutes an unprofessional act as to be grounds for revocation/suspension of a teaching certificate.

- ANSWERS:
1. See body of opinion.
 2. See body of opinion.

This opinion will differ from the usual Department of Law Opinion in the following respects:

- A. It is limited to the specific facts set forth in the opinion.
- B. It does not contain the usual legal citations and quotes, with the exception of references to the Arizona Revised Statutes.
- C. It will contain a bibliography of cases for those who wish to check the sources on which the text of the opinion is based.

We have chosen to issue this opinion in this manner to conserve time and to provide the Board with legal guidelines without the necessity for the usual delay due to the drafting of the traditional format of the full legal opinion. Therefore, this opinion is predicated on the following facts:

- A. That the teachers have served notice on the Board that a strike has been called.
- B. That a strike by the teachers is, in fact, in progress.
- C. That pickets are presently employed by the striking teachers around the property of the school district.
- D. That the local board has attempted to keep the schools open, and has allowed all teachers who wished to continue working.
- E. That the strike by the teachers is over a dispute in the terms of contracts dealing with the next school year.
- F. That the striking teachers are presently under contract to the district to provide services during the period of the strike.

Question 1. A strike under the conditions enumerated above is unlawful. It has been widely noted that Arizona has no statutes providing for or prohibiting strikes by public employees. Further, Arizona has no court decisions which squarely settle the issue. For that reason this office must look to the common law and case decisions which are not based on statutory construction. Under the common law, strikes by public employees are forbidden. It has long been held that a strike by public employees was an act against the public itself, and was therefore unlawful.

The common law and the great majority of decisions in the United States hold that a public employee is an agent of the state and that, as such agent, exercises a portion of the

sovereign power of the state and thus has no right to strike or to interfere with the state's governmental functions.

The choice to become a public employee carries with it the surrendering of the right to strike, which the individual would have as an employee of a private enterprise. That teachers are public employees cannot be argued, and many of the cases which have established the no strike doctrine have been cases involving teachers' associations.

Further, the existence of the tenure laws in Arizona (A.R.S. §§ 15-251, et seq.) indicates the intention of the Legislature to consider teachers as public employees, thus providing them statutory job protection in lieu of the right to strike. For these reasons it is the opinion of this office that teachers are public employees, and that it is therefore unlawful for teachers to strike.

Question 2. The State Board of Education is charged by law with the supervision and control of the certification of teachers and the revocation of all certificates or life diplomas for immoral or unprofessional conduct or for evident unfitness to teach (A.R.S. §§ 15-102.20 and 15-102.22). The State Board has set forth a method for the review of teachers' qualifications and a method of hearing complaints brought against teachers pursuant to this statutory duty.

A.R.S. § 15-201 sets forth the general duties required of teachers in addition to those imposed by the local boards of trustees or education.

A.R.S. § 15-208 states:

"A teacher who fails to comply with any provision of this chapter is guilty of unprofessional conduct and his certificate shall be revoked."

A.R.S. § 15-258 states:

"A probationary or continuing teacher shall not resign after signing and returning his contract, unless the resignation is first approved by the school board. A teacher who resigns contrary to this section shall be deemed to commit an unprofessional act, and upon request of the school board shall be subject to such disciplinary action, including suspension or revocation of certificate, as the state board of education deems appropriate."

We feel that in addition to the statutory grounds for revocation the Board has inherent power, by the terms of A.R.S. § 15-102, to define what shall constitute unprofessional and immoral conduct or evident unfitness to teach, and may discipline holders of teaching certificates accordingly.

Under the procedures as presently promulgated by the State Board, actions for the revocation of certificates are brought before the Board by complaint. The Board, after reviewing the recommendations of its advisory council, then holds a hearing at which the Board acts as a quasi-judicial body, acting on the facts as presented in each individual case. It is therefore our opinion that the Board may hold hearings on properly filed complaints concerning the revocation of certificates of any teacher who comes within the fact situation contained within this opinion.

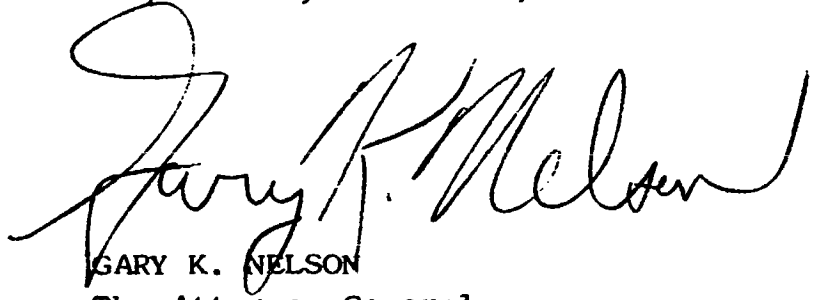
If the Board, after hearing the evidence, feels that the statutes cited above have been violated, or that the teacher has been guilty of unprofessional conduct and that there are no facts in mitigation, the Board may then suspend or revoke the certificate.

This determination is entirely within the jurisdiction of the Board, and the determination must be made by the Board on the basis of the facts presented at the hearing.

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The Attorney General may advise the Board as to the law, but any decision made as to the revocation or suspension of certificates must be made by the Board, and the Attorney General may not invade the jurisdiction of the Board by attempting to define unprofessional acts, as a matter of law.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Gary K. Nelson". The signature is written over the printed name and title.

GARY K. NELSON
The Attorney General

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